IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 27.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.24642 of 2002

N.Chirtrarasan .. Petitioner

Vs.

1.The Inspector of (SWS) Central
Industrial Security Force,
CISF RCFL Complex,
Chembur, Mumbai-74.

2.The Deputy Inspector General,
Central Industrial Security Force,
Southern Zone, Ministry of Home Affairs,
Rajaji Bhawan, 'B' Bhavan,
Chennai-600 090.

3.The Senior commandant,
Central Industrial Security Force,
Chennai Port Trust,
Chennai-600 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.R.Parthiban

For Respondents : Mr.S.Udayakumar, SCGSC.,

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ORDER

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner has filed the above writ petition for issuance of writ of Certiorarified Mandamus, to call for the records of the first respondent in proceedings Nos. V-11014/45/SZ/LC/ SWS/01/8520 dated 20.12.2001, affirming the order of the second respondent in proceedings No.V-11014/46/2001/L&R(SZ) dated 28.08.2001, affirming

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the order of the third respondent in proceedings No.V-150014/1/Estt.I/NC/2001/6280 dated 02.07.2001 and consequently, direct the respondents to reinstate the petitioner in service with all monetary benefits.

2. According to the petitioner, on 25/26.10.2000, he was deployed for duty at Gate No.II in "A" Coy. His duty hours were from 17.00 hours to 05.00 hours(12 hours duty). While he was performing his duty, at about 22.00 hours, the Assistant Commandant Mr.K.V.K. Sriram along with two other Assistant Commandants in civilian dress, came to the area, where he and others performed duties. They conducted check on the petitioner at the duty spot itself. According to him, he has not obstructed or misbehaved with the Checking Officers. However, he was charge sheeted and he made a representation seeking copies of certain documents including the copy of the preliminary enquiry report. Inspite of his specific request, those copies were not at all supplied to him. Thereafter, an enquiry was conducted. Though six witnesses were examined on the side of the Department, out of which, first three witnesses were the officers themselves, who had conducted the checking. Among the prosecution witnesses, PW6 had clearly deposed that though the petitioner had requested the Assistant Commandant (PW1) to conduct the checking inside the office, admittedly, checking was conducted in the middle of the road itself. He also deposed that he had not misbehaved with the Assistant Commandant. He further deposed that the Assistant Commandant was under the influence of alcohol and harassed the petitioner while conducting checking. The statement of PW6 was rejected by the enquiry officer on the ground that he made such a statement to save his own skin, because he was also facing another enquiry. Finally, the enquiry officer has submitted his report on 26.05.2001 wherein he held that the charges were proved. On 30.05.2001, a copy of the enquiry report was furnished to him and he was asked to give representation. He has also made a representation on 14.06.2001. By an order dated 02.07.2001, he was given punishment of compulsory retirement of service with full compensation pension and 2/3rd portion of gratuity.

3. Aggrieved by such order, the petitioner has preferred an appeal to the second respondent on 11.07.2001 and the same was rejected on 28.08.2001. Thereafter, he made a representation on 29.09.2001 and the same was also rejected. Aggrieved by the aforesaid orders and having no other remedy, the petitioner has filed the present writ petition.

4. The petitioner, after taking us through the charge memo, enquiry proceedings, orders of original, appellate and revisional authorities, has raised the following contentions:

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(1) Inspite of specific request, the petitioner was not given a copy of preliminary enquiry report, which is a vital document in support of his defence.

(2) The findings of the enquiry officer are perverse.

(3) All the three authorities including the original authority failed to consider the proportionality of the punishment while awarding punishment of compulsory retirement.

5. On the other hand, the learned Senior Central Government Standing counsel appearing for the respondents submitted that inasmuch as all relevant materials including the copy of the enquiry report were furnished to the petitioner and he participated in the enquiry, there was no flaw and there is no need to supply preliminary enquiry report as claimed. He also contended that inasmuch as the petitioner participated in the enquiry and effectively cross-examined the witnesses on the prosecution side, the decision arrived at by the enquiry officer cannot be faulted with. Finally, he submitted that the punishment inflicted on the petitioner is quite reasonable and acceptable and there is no valid ground for reduction.

6. We have carefully considered the materials placed and rival contentions.

7. In order to appreciate the contentions raised, it is useful to refer Article of charge, which reads as under:

"Gross misconduct and insubordination in that No.882330435 Constable N.Chitrarasan of 'A' Coy, CISF Unit Chpt Chennai, who was deployed for duty at Gate No.II from 17.00 hours to 05.00 hours on 25/26.10.2000 misbehaved with Sri K.V.K.Sriram, Assistant Commandant on 25.10.2000 at about 22.00 hours in presence of CISR personnel and civilians by removing his trouser upto the ankle and asking the Assistant Commandant whether he should remove his underware also for search when Shri K.V.K.Sriram, Assistant Commandant went to the duty post on surprise checking. "

8. Now let us consider whether there was proper and valid enquiry and the orders passed by the disciplinary authority and the revisional authority are sustainable.

9. Coming to the first and foremost contention that the petitioner was not supplied with the copy of the preliminary enquiry report, it is true that the petitioner made a specific request and

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he was not supplied with the preliminary enquiry report. According to the petitioner, the preliminary enquiry reveals that the officers, who checked the petitioner and others were not in uniform and also they were under the influence of alcohol. Now, we have to see whether failure on the part of the Department in supplying preliminary report would vitiate the ultimate order passed by the disciplinary authority.

10. Learned counsel for the petitioner heavily relied on a Division Bench decision of Rajasthan High Court reported in 2000-(LBI)-GJX-1136-RAJ (BABULAL VS. STATE OF RAJASTHAN AND OTHERS). In the case before the Division of Rajasthan High Court, the petitioner therein demanded copies of statements recorded in the enquiry dated 08.05.1987, which had not been supplied to him. The petitioner again by letter dated 23.09.1987, specifically demanded the copies of three statements earlier recorded , which were not given to him. As against the said claim, the respondents therein have filed a reply affidavit stating that the copies were not supplied on the ground that since the respondents did not rely on those documents. Hence, it was not necessary for them to supply those copies. The learned single Judge has accepted the contention of the respondents. Disagreeing with the said view expressed by the learned single Judge, the Division Bench has concluded that the respondents are duty bound to supply the copies when demanded by the delinquent officer for his defence.

11. Learned counsel for the petitioner has also relied on the judgment of the Supreme Court reported in 1990 (4) Supreme Court Cases 464 (U.P. STATE ROAD TRANSPORT CORPORATION VS. MUNIRUDDIN) wherein their Lordships have held that non-supply of vital document is fatal to the case of the Department. In that case, the employee has been throughout pleaded that he did not make the erasures or any other false entry. After noting the said factual aspect, the High Court considered the various figures and entries in the originals in which such erasures and entries are alleged to have been made by the employee and eventually observed that the entire enquiry was based on some of these documents and if a carbon copy of the way-bills had been shown, the authority may well have been convinced that the charge levelled against him was not correct, and that, therefore, the non-supply of those documents caused prejudice. The Honourable Supreme Court accepted the said conclusion and dismissed the appeal filed by the U.P. State Road Transport corporation.

12. The learned counsel for the petitioner has also relied on a Division Bench decision of Karnataka High Court reported in 2005(1) LLN 242 (VENKATESH GURURAO KURATTI AND SYNDICATE BANK), wherein the Division Bench has held that though certain documents, which may not be the basis for framing the charges nor those on which the disciplinary authority places reliance to prove the charges against

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the delinquent, but are required by the delinquent to effectively defend himself in the enquiry and to effectively cross-examine the witnesses of the disciplinary authority, the delinquent is entitled to receive the same. They further held that if required relevant documents are not made available to a delinquent, it is trite that such delinquent would be prejudiced in defending himself against the charge effectively.

13. In the light of the proposition, we have examined the stand taken by the petitioner at the earliest point of time, the entire enquiry proceedings including the witnesses examined on the side of the prosecution, effective cross examination by the petitioner and the ultimate conclusion arrived at by the enquiry officer. It is not the case of the petitioner that he was not given an opportunity to participate in the enquiry effectively. On the other hand, the records placed clearly show that he has not only participated in the enquiry, but also cross-examined effectively all the witnesses examined on the side of the prosecution. In fact, PW6 co-constable turned hostile. It is also not in dispute that the entire enquiry report and the documents relied on therein were supplied to the petitioner. In fact on receipt of the report, he submitted his further explanation. Thereafter, the disciplinary authority, on consideration of the entire material, arrived at a conclusion and imposed a punishment of compulsory retirement. In view of the above mentioned factual details, especially the petitioner would not handicap in any way in the enquiry and in fact participated and availed all the opportunities, we are of the view that merely because he was not supplied with the preliminary enquiry report, it will not prejudice the petitioner in any way in defending his case. It is also not in dispute that the Department has not relied on the preliminary report while arriving at a conclusion against the petitioner. In such circumstances, we are of the view that the decisions relied on by the learned counsel for the petitioner are not helpful to his case.

14. Coming to the second contention, viz., the finding of the enquiry officer is perverse, we have verified the entire report of the enquiry officer. We have also perused the evidence let in on the side of the prosecution, cross-examination by the writ petitioner, analysis and ultimate conclusion of the enquiry officer. Much was said about the evidence of PW6. It is true that PW6, Constable turned hostile. His evidence was not accepted by the enquiry officer as well as by the disciplinary authority. The reason for not giving credence to his evidence is that when similar check was made on the same day, he was found in possession of money from his pocket and he was also facing charge with reference to the said incident. Except the evidence of PW6, all other officers supported the charge. Though the learned counsel for the petitioner submitted that PWs.1, 2 and 3 are senior officers, who checked the petitioner and others, as rightly concluded by the

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enquiry officer and other authorities, there is no valid reason to reject their statements. It is also brought to our notice that PWs.4 and 5 Constables also corroborated the evidence of PWs.1, 2 and 3. On going through the entire materials placed before the enquiry officer and his ultimate conclusion, we are unable to accept the argument of the learned counsel for the petitioner.

15. Coming to the proportionality of the punishment, though the learned counsel for the petitioner has submitted that the punishment awarded is excessive, in view of the fact that the said aspect was considered by all the three authorities and the fact that he had seven punishments to his credit during his career, we are not inclined to interfere with.

16. It is useful to refer the conclusion arrived at by the original authority. In para 5 of his order, after agreeing with the findings of the enquiry officer, the authority has concluded that the offence committed by the charged official is very serious in nature and deserves stringent punishment. He further observed that this type of indiscipline cannot be tolerated in a disciplined force like CISF. He further concluded that he is not a fit person to continue further in a disciplined force, who do not have any respect towards his superior officers. After finding so, he awarded punishment of compulsory retirement from service with full compensation pension and 2/3rd portion of gratuity as admissible to him on the date of his compulsory retirement. The appellate authority has also considered the relevant factors viz., serious misconduct, which does not deserve lenient punishment as claimed and satisfying himself based on the material, refused to interfere with the punishment imposed by the original authority. The revisional authority, while considering the claim regarding punishment has noted that the petitioner had been awarded with seven punishments in the past for various omissions and commissions, after finding that enquiry had been conducted as per the laid down procedure and the charge levelled against him had been found proved and he was afforded ample opportunity to defend the case and finding that the penalty imposed by the disciplinary authority is justified, rejected the same as devoid of merit.

17. In addition to the factual conclusion arrived at by all the three authorities in respect of quantum of punishment, it is useful to refer the recent decision of the Apex Court reported in (2006) 1 CTC 361 (STATE OF RAJASTHAN AND ANOTHER VS. MOHAMMED AYUB NAZ) wherein Their Lordships have highlighted, under what circumstances, this Court can interfere with in the quantum of punishment. After referring various earlier decisions, Their Lordships have concluded that the Court/Tribunal cannot interfere with the findings of fact based on evidence and substitute its own independent findings and that where findings of disciplinary authority or appellate authority are based on some evidence, the

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Court/Tribunal cannot re-appreciate the evidence and substitute its own findings. They further held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made and that power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court.

18. In (2006) 1 Supreme Court Cases 430 (HOMBE GOWDA EDUCATIONAL TRUST AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS), regarding punishment, Their Lordships have held that a person when dismissed from service is put to great hardship but that would not mean that a grave misconduct should go unpunished. They further held that the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. In the same paragraph, Their Lordships have further observed that the maintenance of discipline of an institution is equally important. In para 23, after referring the judgment in V.RAMANA VS. A.P. SRTC ((2005) 7 SCC 338) , concluded that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal, there is no scope for interference.

19. In the case on hand, we have already referred to the gravity of the charge. We have also observed that the petitioner was afforded reasonable opportunity to participate in the enquiry. We are satisfied that he not only participated in the enquiry, but also effectively cross-examined all the prosecution witnesses. Before the report of the enquiry officer was accepted by the disciplinary authority, the same was communicated to the petitioner and he was afforded further opportunity to submit his explanation. He submitted his explanation and the same was also considered. The proportionality of the punishment was also taken note by the disciplinary authority as well as the appellate and revisional authorities. We have also referred to the factual information mentioned by the revisional authority viz., the petitioner had seven punishments to his credit in the past service. In the light of the factual scenario and in view of the legal proposition enunciated by the Apex Court, we are satisfied that there is no valid ground for interference even with regard to the punishment. As observed in V.RAMANA VS. A.P. SRTC ((2005) 7 SCC 338), unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of this Court, there cannot be any interference at this stage.

20. In these circumstances, we are unable to accept the contentions raised by the learned counsel for the petitioner. On the other hand, we are in agreement with the conclusion arrived at by all the authorities including the quantum of punishment.

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Consequently, the writ petition fails and the same is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Inspector of (SWS) Central
Industrial Security Force,
CISF RCFL Complex,
Chembur, Mumbai-74.

2.The Deputy Inspector General,
Central Industrial Security Force,
Southern Zone, Ministry of Home Affairs,
Rajaji Bhawan, 'B' Bhavan,
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3.The Senior commandant,
Central Industrial Security Force,
Chennai Port Trust,
Chennai-600 001.

1 cc to Mr.S.Udayakumar, SCGSC., SR.45787
1 cc to Mr.R.Parthiban, Advocate, SR.46333

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